IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1046 of 2007

Commissioner of Income-tax,
Chennai. .. Appellant

Vs.

M/s.Trishul Investments Ltd.,
"Dhun Building",
827, Anna Salai,
Chennai-2. .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.437/Mds/04 dated 25.01.2007 for the assessment year 2000-2001 against the order of the Commissioner of Income Tax [A] III Chennai 34 in ITA.No.16/2003-04 / A.III dated 14.11.2003 against the Order of the Asst. Commissioner of Income Tax, Company Circle III[2], Chennai 34, in PA.No./GIR No.32428 dated 6.3.2003 for the assessment year 2000-2001.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I.T.A. No.437/Mds/04 dated 25.01.2007, raising the following substantial questions of law:-

"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the profit / loss on purchase and sale of shares of Rasi Cements Ltd. should be treated as capital gain / loss and also allowing indexation benefit?

2. Whether in the facts and circumstances of the case, the Tribunal was right in allowing the interest

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

liability incurred on borrowings to acquire the shares?"

2. The facts leading to the above substantial questions of law are as under:-

The assessee is a Public Limited Company and is carrying on the business of investment in shares and securities. The relevant assessment year is 2000-2001 and the corresponding accounting year ended on 31.03.2000. The assessee filed its Return of income on 30.11.2000 declaring loss of Rs.15,62,90,890/-. The Return was processed under Section 143(1) of the Income-tax Act ("Act" in short) on 18.01.2002. Subsequently the case was reopened under Section 147 of the Act after issuing notice under Section 148 of the Act. One M/s.India Cements Ltd. ("ICL" in short) is a leading manufacturer of cement in South India. M/s.Raasi Cements Ltd. ("RCL" in short) was also a cement manufacturer. RCL is having two other divisions of paper and ceramic. ICL wanted to take over the cement division of RCL and for this purpose, the ICL, in concert with two of its subsidiaries and also with one of its associate concerns, M/s.Trishul Investments Pvt. Ltd., decided to come out with an open offer to the shareholders of RCL for purchase of its shares at a price of Rs.300/- per share. The open offer was opened on 04.05.1998 and closed on 02.06.1998. As the assessee company did not have sufficient funds to purchase the shares of RCL, funds were provided by ICL either directly or by arranging bridge loans from ICICI Bank. The interest liability on these borrowed funds was debited in the books of the assessee company only. Under this scheme, for every share held in RCL, the shareholders were paid a sum of Rs.300/- per share by ICL and paid up value of shares of RCL was reduced to Rs.0.05 per share. The assessee worked on capital gains which arose from restructuring by taking total amount received as consideration and reducing therefrom the cost of acquisition of shares. While doing so, it excluded the face value of residuary amount of share. It resulted in long term capital loss as well as short term capital loss. The Assessing Officer did not accept the same under the head "capital gain" and held that the entire share holdings would constitute business assets of the assessee company and hence indexation of cost of acquisition benefit could not be extended to the assessee. On the issue of interest liability, the Assessing Officer disallowed the same on the ground that the entire transaction was carried out on behalf of the ICL. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals) ("CIT(A)" in short). The CIT(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal. Hence the present tax case by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Assessing Officer is right in holding that the assessee had engaged in an adventure in the nature of trade at the behest of the holding company, i.e, M/s.India Cements Ltd. It is also submitted that, as the intention of the assessee is to do business, the Assessing Officer had correctly assessed under the head "income from business". It is also further

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

submitted that the question of allowing interest liability will not arise as there is no specific provision under the scheme of computation of capital gains under the Income-tax Act to allow any interest liability.

4. Heard the counsel. The assessee is in the business of investments in shares and securities and it was never in the business of trading in shares. The term "business" is defined in Section 2(13) of the Act. The "capital asset" is defined in Section 2(14) of the Act. The test to decide whether it was an investment or an adventure in the nature of trade, has a very thin line of demarcation. Even a single instance of transaction can be regarded as business and even multiple transaction sometimes are deemed as investments. So, the criteria for deciding whether it is investment or business is that of the intention of the assessee, viz. whether assesses's real intention is to invest or the intention was in the nature of trade. As per the Memorandum of Association of the assessee company, it could be seen that the assessee company was incorporated on 24.01.1995 under the Companies Act, 1956 to engage in the business of investment. The Tribunal considered the relevant materials and evidences and held in Paragraph-8 of its order, as follows:-

> "On a consideration of rival submission, we are of the view that the assessee's contention is justified in law. It is also a point for consideration that the Department never attempted to lift the corporate veil to see the real nature of the transaction. Right from the Memorandum of Association, the object of the assessee company is only to as an investment company. Particularly for the period ending 31.03.1996 & 31.03.1997, the company did not carry on any operations. The purchase of shares of RCL by the assessee company was only with the intention of making investment. The assessee had no intention to trade in shares. Hence it cannot be a business asset in the hands of the assessee company. The assessee company offered the same under the capital gain. Hence, by respectfully following the decisions of the Hon'ble Supreme Court and Calcutta High Court cited supra, we set aside the orders of the authorities below by holding that it is only an investment activity and it cannot be termed as a business activity. We therefore, decide the first issue in favour of the assessee and against the Revenue."

The finding given by the Tribunal is that the assessee had no intention to trade in shares. Hence the purchase of shares could not be business asset in the hands of the assessee. The assessee has rightly offered the same under the head "capital gain". The Tribunal also correctly arrived at a conclusion that it is only an investment activity and held that the profits derived from the sale of shares is subject to capital gain. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Under the circumstances, no

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

substantial question of law arises for consideration of this Court in respect of Question No.1.

5. In respect of Question No.2, the interest liability on the borrowed funds was debited in the books of the assessee company. The Tribunal correctly held that the interest paid for acquisition of shares would partake character of cost of share and therefore the same was rightly capitalised along with the cost of acquisition of shares. There is no denial regarding the borrowed money for the acquisition of shares by the assessee. The Tribunal correctly held that the interest payable thereon should be added to the cost of acquisition of shares. The reasons given by the Tribunal are based on valid materials and evidence. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence no substantial question of law arises for consideration of this Court in respect of Question No.2.

6. In the result, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

km

To
1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench 'C',
   Chennai.
2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.
3. The Commissioner of Income-tax (Appeals) III,
   Chennai-600 034.
4. The Assistant Commissioner of Income-tax,
   Company Circle III(2),
   Chennai-600 034.

+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.42413

T.C.(A) No.1046 of 2007

mrd[co]
gp/1.8.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/